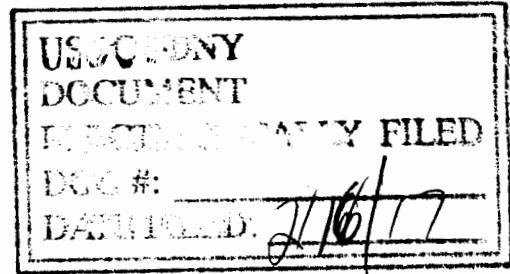


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February 14, 2017



BY EMAIL

The Honorable Jed S. Rakoff
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

ORDER ENDORSED

Leontiev v. Varshavsky, No. 1:16-cv-03595-JSR

Dear Judge Rakoff:

This firm is counsel to Defendant Varshavsky in the above-referenced matter. We submit this letter as directed by the Court via telephonic order and in support of Defendant's request for relief from the Court's February 10, 2017 filing deadline for Defendant's opposition to Plaintiff's motion for summary judgment.

With two exceptions, Defendant's submission in opposition to Plaintiff's summary judgment motion, including the brief and response to Plaintiff's statement of material facts, was served and filed on February 10th. Plaintiffs received service of the full submission by 1:09 AM on the morning of February 11th. We explain the reasons for the delay with respect to the two exceptions below, and apologize to the Court for the late filing. We take seriously our obligation to meet the Court's deadlines, and are taking steps to improve our processes in an effort to reduce the likelihood of similar mishaps.

First, the Supplemental Declaration of Svetlana Volodina (ECF 59) was served on February 10th but did not complete filing until ten minutes after midnight on February 11th. We first attempted filing beginning on February 10th at approximately 10:39 PM but encountered error messages while attempting to access the ECF website until 11:05 PM. After we successfully filed Defendant's Memo of Law, 56.1 Statement, and Millet Declaration, we again attempted to file the Volodina Declaration at approximately 11:45 PM but that effort failed because the document just exceeded ECF's file-size limitation. After splitting the Volodina Declaration into two files to address the size limitation, we completed filing at 12:10am.

The Honorable Jed S. Rakoff

2

February 14, 2017

Second, although we served an unredacted copy of the Hecker Declaration (ECF 60) on February 10th, we did not serve an unredacted copy of the annexed exhibits until 1:09 AM on February 11th. The delay in service of these exhibits resulted from personnel and technical issues and the sheer complexity of the filing, which involved numerous attachments, translations and confidentiality designations. The legal assistant responsible for preparing the exhibits unexpectedly fell ill on Friday and the team members who stepped in at that point lost time retracing the steps that had been completed. Progress was further delayed when certain exhibits were rendered illegible when converted to PDF/a format had after having cover sheets affixed. The un-redacted exhibits were ready just after midnight, but the server that housed the exhibits became temporarily inaccessible due to scheduled maintenance. (We knew the server would be going off-line but had expected our filing to be completed on time.) The server was restored at approximately 1 AM on February 11th, and service of the exhibits was completed nine minutes later. The redacted exhibits were ready for filing a few hours thereafter, but the clerk responsible for filing documents on ECF was not available until 11 AM Saturday morning; we completed the filing at noon.

We submit that Plaintiff was not prejudiced by our late service and filing. With the exception of the exhibits to the Hecker Declaration (which Plaintiff received in unredacted form at 1:09 AM on February 11th), Plaintiff received timely service of all opposition papers, including the Hecker Declaration itself. And the exhibits Plaintiff received 69 minutes after the filing deadline are all documents produced in discovery or publicly available and all were identified in Defendant's submissions and readily available to Plaintiff from its own files.

We apologize again for the missing the Court's deadline. We ask that the Court accept the Hecker Declaration exhibits and Volodina Declaration for consideration and resolve Plaintiff's motion on its merits and a full record.

Respectfully submitted,



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cc: To all counsel of record (via email)

→ Request granted.
SO ORDERED
Jed S. Rakoff
2-14-17